

Hague Case Law: Latest Developments

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International Court of Justice

(1) *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*

On 16 December 2015, the International Court of Justice (ICJ) rendered its judgment in two cases between Costa Rica and Nicaragua concerning activities carried out by Nicaragua and Costa Rica in the border area between both states. Both cases were joined by the Court on 17 April 2013.

According to Costa Rica, Nicaragua had invaded and occupied Costa Rican territory; dug a channel on Costa Rican territory; and breached its obligation under international law by conducting works, including the dredging of the San Juan River. According to Nicaragua, Costa Rica had violated Nicaraguan sovereignty and had caused environmental damage on Nicaraguan territory following the carrying out of a major road construction in the border area along the San Juan River.

On 8 March 2011, the Court indicated provisional measures, upon the request of Costa Rica. The Court ordered, among other things, that each Party shall refrain from sending to, or maintaining in the disputed territory any personnel, whether civilian, police or security, and that each party shall refrain from actions which might aggravate or extend the dispute. Costa Rica was allowed to send civilian personnel into the disputed territory to avoid irreparable prejudice to that part of the wetland where the disputed territory is located, in consultation with the Secretariat of the Ramsar Convention and after notifying Nicaragua.

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The Court held that it had jurisdiction to hear this dispute on the basis of Article XXXI of the Pact of Bogotá and the declarations of both states recognizing the compulsory jurisdiction of the Court under Article 36 of the Statute of the ICJ. Subsequently, the Court held, among other things, that Costa Rica had sovereignty over the ‘disputed territory’ as defined by the Court; that Nicaragua had violated the territorial sovereignty of Costa Rica by excavating three channels and establishing a military presence on Costa Rican territory; that Nicaragua had breached its obligations under the provisional measures order of 8 March 2011 by excavating two channels in 2013 and establishing a military presence in the disputed territory; and that Nicaragua had breached Costa Rica’s rights of navigation on the San Juan River. The Court also held that Costa Rica had violated its obligation under general international law by failing to carry out an environmental impact assessment concerning the construction of Route 1856.

International Criminal Court

(1) *Prosecutor v. Bemba*

On 21 March 2016, Trial Chamber III of the International Criminal Court (ICC) rendered its judgment in the case against Jean-Pierre Bemba Gombo (Bemba) concerning the situation in the Central African Republic (CAR). Bemba was President of the *Mouvement de libération du Congo* (MLC), a political party founded by him, and Commander-in-Chief of its military branch, the *Armée de libération du Congo* (ALC). He is a national of the Democratic Republic of Congo (DRC) and was a member of the Senate of the DRC at the time of his arrest. He was prosecuted in relation to crimes committed in CAR between 26 October 2002 and March 2003.

The Trial Chamber held that Bemba had deployed an MLC contingent of about 1500 men to CAR upon the request of the former president of CAR Patassé to help him to counter forces loyal to his former Chief of Staff. The Trial Chamber concluded that the MLC soldiers directed a widespread attack against the civilian population and committed many war crimes within the context of the non-international armed conflict in CAR. The Trial Chamber subsequently convicted Bemba, as someone who effectively acted as a military commander (Article 28(a) ICC Statute), of crimes against humanity (murder and rape pursuant to Article 7(1)(a) and (g) ICC Statute) and war crimes (murder, rape and pillaging pursuant to Article 8(2)(c)(i), Article 8(2)(e)(vi) and Article 8(2)(e)(v) ICC Statute). His sentence will be determined at a later stage.

International Criminal Tribunal for the Former Yugoslavia

(1) *Prosecutor v. Stanišić and Simatović (Appeals Chamber)*

On 15 December 2015, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) rendered its judgment on appeal in the case against Stanišić and Simatović. Stanišić is the former (Deputy) Head of the

Serbian State Security Service; Simatović held various positions in the Serbian State Security Service, and he is the former commander of the Special Operations Unit. They were both acquitted on charges of war crimes (murder) and crimes against humanity (persecutions, murder, deportations, and other inhumane acts (forcible transfers)) committed between April 1991 and 31 December 1995 against the Croat, Bosnian Muslim, Bosnian Croat, and other non-Serb civilian populations in large areas of Croatia and Bosnia-Herzegovina. Although the Trial Chamber held that the units involved had committed war crimes and crimes against humanity, it found both men not guilty because these crimes could not be attributed to them. The Trial Chamber ruled that they did not share the purpose of the joint criminal enterprise (JCE); that it was not proven beyond reasonable doubt that they had planned or ordered the crimes; and that their assistance to these units had not been directed towards the commission of these crimes.

The Appeals Chamber quashed the Trial Chamber's decisions to acquit Stanišić and Simatović of committing the indicted crimes through their participation in a JCE and for aiding and abetting the indicted crimes. It subsequently ordered a retrial on all counts of the indictment and ordered the Trial Chamber to apply the correct law on aiding and abetting liability, should it consider this mode of liability, which does not require that the acts of the aider and abettor be specifically directed towards assisting the commission of a crime.

(2) *Prosecutor v. Karadžić*

On 24 March 2016, Trial Chamber III rendered its judgment in the case against Karadžić. Karadžić was, among other things, the sole President of the Republica Srpska from 17 December 1992 and the Supreme Commander of the armed forces of the Republica Srpska. Karadžić was prosecuted for genocide, crimes against humanity (persecution, extermination, murder, deportation, inhuman acts (forcible transfer)) and war crimes (murder, acts of violence to spread terror among the civilian population, unlawful attacks on civilians, and the taking of hostages) committed in various locations in Bosnia and Herzegovina (including Sarajevo and Srebrenica) from October 1991 until November 1995.

The Trial Chamber found Karadžić guilty on all counts, with the exception of genocide committed in 20 municipalities of the autonomous region of Krajina, the Sarajevo region, and the eastern part of Bosnia and Herzegovina. According to the Trial Chamber, Karadžić had committed these crimes through four JCEs: the Overarching JCE, the Sarajevo JCE, the Hostages JCE, and the Srebrenica JCE. Karadžić was sentenced to 40 years' imprisonment.

(3) *Prosecutor v. Šešelj*

On 31 March 2016, Trial Chamber III rendered its judgment in the case against Šešelj. Šešelj is the former leader of the Serbian Radical Party and a prominent political figure in the former Federal Republic of Yugoslavia. He was prosecuted for crimes against humanity (persecutions, expulsion, inhumane acts (forcible transfer)) and war crimes (murder, torture, cruel treatment, wanton destruction of villages or devastation unjustified by military necessity, destruction or wilful damage done to institutions dedicated to religion or education, the plundering of public or private

property) committed in Bosnia and Herzegovina and Croatia between 1991 and 1993.

The Trial Chamber found that the Prosecution had failed to prove the existence of a JCE, whose members included local and national authorities, military leaders and deputies, and paramilitary and volunteer units, and the object and purpose of which was to create a ‘Greater Serbia’. According to the Trial Chamber, the Prosecution had failed, among other things, to establish a criminal purpose. Further, the Trial Chamber found that the Prosecution had failed to establish Šešelj’s responsibility for the actual commission of expulsions and inhumane acts (forcible transfer) as crimes against humanity through a number of speeches inciting hatred. Šešelj was subsequently acquitted of all charges.

International Criminal Tribunal for Rwanda

(1) *The Prosecutor v. Nyiramasuhuko et al. (Appeals Chamber)*

On 14 December 2015, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered its judgment in the case against Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi, and Ndayambaje. It is the last judgment by the Appeals Chamber of the ICTR. Nyiramasuhuko was the Minister of Family and Women’s Development in the government of Rwanda during the events of 1994 and the mother of the co-accused Ntahobali. Ntahobali was both a student and part-time manager of Hotel Ihuliro located in Mamba Cellule, Butare-ville Sector, Ngoma Commune, Butare Prefecture.

Nsabimana was the head of the *Parti social démocrate* (PSD) in Kigali-rural Prefecture and served as prefect of Butare from 19 April until 17 June 1994. Nteziryayo worked at the Ministry of Interior and Communal Development of Rwanda, where he served as Director of Communal Police Matters until 17 June 1994, when he was appointed prefect of Butare.

Kanyabashi was a member of the PSD and served as *bourgmestre* of Ngoma Commune in Butare Prefecture from April 1974 until he left Rwanda in July 1994. Ndayambaje served as *bourgmestre* of Muganza Commune from 10 January 1983 to October 1992, and from 18 June 1994 until he left Rwanda in July 1994.

They were all prosecuted in relation to crimes committed in Butare Prefecture between April and June 1994 and convicted of a long list of crimes, including (conspiracy to commit) genocide, crimes against humanity and war crimes on 24 June 2011. The Trial Chamber sentenced them to 25 years’ imprisonment (Nsabimana), 30 years’ imprisonment (Nteziryayo), 35 years’ imprisonment (Kanyabashi), and life imprisonment (Nyiramasuhuko, Ntahobali, Ndayambaje).

The Appeals Chamber affirmed Nyiramasuhuko’s convictions; it generally affirmed Ntahobali’s convictions; it affirmed Nsabimana’s convictions; it affirmed Nteziryayo’s convictions; it generally affirmed Kanyabashi’s convictions; it generally affirmed Ndayambaje’s convictions; and dismissed the appeals by the Prosecution.

However, the Appeals Chamber determined that the accused's right to be tried without undue delay had been violated (contrary to the finding of the Trial Chamber). The delays in the start of the trial due to the Prosecution's conduct and delays resulting from the Trial Chamber judges' simultaneous assignment to multiple cases cannot be reasonably explained or justified. The Appeals Chamber also held that the Trial Chamber had applied an incorrect legal standard (discriminatory intent on ethnic grounds rather than on political, racial, or religious grounds as required by Article 3(h) Statute) in its convictions for persecution as a crime against humanity and had made errors in its determination of the sentences. Therefore the Appeals Chamber reduced the life sentences of Nyiramasuhuko, Ntahobali, Ndayambaje to 47 years' imprisonment. It further reduced Nsabimana's sentence to 18 years' imprisonment, Nteziryayo's sentence to 25 years' imprisonment, and Kanyabashi's sentence to 20 years' imprisonment.

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